

August 22, 1997

Barbara A. Schermerhorn
Clerk

NOT FOR PUBLICATION
**UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE TENTH CIRCUIT**

IN RE DARRELL EUGENE
STEVENS,

Debtor.

BAP No. WO-97-024

DARRELL EUGENE STEVENS,

Plaintiff-Appellant,

v.

JUDY L. STEVENS,

Defendant-Appellee.

Bankr. No. 96-17137
Adv. No. 96-1424
Chapter 7

ORDER AND JUDGMENT*

Appeal from the United States Bankruptcy Court
for the Western District of Oklahoma

Before MCFEELEY, Chief Judge, PUSATERI, and BOULDEN, Bankruptcy
Judges.

MCFEELEY, Bankruptcy Judge.

After examining the briefs and appellate record, this Panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. See Fed. R. Bankr. P. 8012; 10th Cir. BAP L.R. 8012-1(a). The case is therefore ordered submitted without oral argument.

This case involves a debtor's appeal from a bankruptcy judge's denial of his motion for summary judgment in an adversary proceeding to determine

* This order and judgment has no precedential value and may not be cited, except for the purposes of establishing the doctrines of law of the case, res judicata, or collateral estoppel. 10th Cir. BAP L.R. 8010-2.

dischargeability of a debt.

This Court has jurisdiction to hear appeals from final judgments, orders, and decrees. 28 U.S.C. § 158(a), (b). Generally, an order is final if it ends the litigation on the merits and leaves nothing for the court to do but execute the judgment. Adelman v. Fourth Nat'l Bank and Trust Co., N.A. (In re Durability, Inc.), 893 F.2d 264, 265 (10th Cir. 1990). Ordinarily, the denial of a motion for summary judgment is not final, but is interlocutory in nature and is, therefore, not appealable. Smith v. First Nat'l Bank (In re Smith), 735 F.2d 459, 461 (11th Cir. 1984) (citing 6 Moore's Federal Practice & Procedure ¶ 56.20(2) (1982)); see also Harris v. Beneficial Oklahoma, Inc. (In re Harris), 209 B.R. 990, 992 (10th Cir. BAP 1997) (denial of summary judgment motion ordinarily not appealable because it does not dispose of entire case but requires resolution through trial).

When a judge denies one party's motion for a summary judgment, he merely preserves the status quo in the case. He indicates only that the moving party has not presented a sufficient case to win outright at that point, i.e., he has failed to show the court that no genuine issue of material fact exists and that he is entitled to a judgment as a matter of law.

Smith, 735 F.2d at 461.

However, under 28 U.S.C. § 158(a)(3) an appeal of an interlocutory order may be taken only "with leave" of the panel. 1 Collier on Bankruptcy ¶ 5.07[4] (Lawrence P. King ed., 15th ed. rev. 1997); Fed. R. Bankr. P. 8003(a). Pursuant to Fed. R. Bankr. P. 8003(c), we will treat this appeal as a request for leave to file an interlocutory appeal. However, finding no basis for granting leave to appeal, this Court DENIES THIS REQUEST for leave to appeal the denial of a summary judgment motion, and DISMISSES THIS APPEAL because it is not from a final order.